

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;
Ashley E. Poling, Vice Chairwoman;
Mark Acton;
Ann C. Fisher; and
Robert G. Taub

Competitive Product Prices
Inbound E-Format Letter Post

Docket No. CP2021-94

FINAL DETERMINATION TO UNSEAL SELF-DECLARED RATES FOR
INBOUND LETTER POST SMALL PACKETS AND BULKY LETTERS

(Issued July 13, 2021)

I. INTRODUCTION

On May 14, 2021, the Postal Service provided notice of specific per-item and per-kilogram self-declared prices that it intends to implement for Inbound Letter Post Small Packets and Bulky Letters on January 1, 2022.¹ The Postal Service filed these rates under seal and requested that the Commission accord these rates non-public treatment. Notice at 4; *id.* Attachment 1 (Application). In accordance with 39 U.S.C. § 504(g)(3) and 39 C.F.R. § 3011.103(c), the Commission determines that it is not appropriate to accord non-public treatment to the self-declared rates for Inbound Letter

¹ Notice of the United States Postal Service of Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment, May 14, 2021, at 1 (Notice).

Post Small Packets and Bulky Letters and that these rates should be unsealed 7 days after the issuance of this Order.

II. PROCEDURAL HISTORY

On May 14, 2021, the Postal Service provided notice of specific per-item and per-kilogram self-declared prices for Inbound Letter Post Small Packets and Bulky Letters to be effective on January 1, 2022, and filed these self-declared rates under seal. Notice at 1, 4.

On May 28, 2021, the Commission approved the Postal Service's specific per-item and per-kilogram self-declared prices for Inbound Letter Post Small Packets and Bulky Letters.² On June 11, 2021, the Commission issued a preliminary determination to unseal the self-declared rates for Inbound Letter Post Small Packets and Bulky Letters.³ The Commission found that disclosing the self-declared rates after the Universal Postal Union (UPU) International Bureau (IB) published the rates was not likely to result in the commercial harms identified by the Postal Service in its Application. Order No. 5917 at 7-12. After it determined it is unlikely that unsealing the self-declared rates would result in the alleged commercial harms, the Commission outlined why unsealing the self-declared rates furthers the public interest of maintaining financial transparency. *Id.* at 12-14. Specifically, small packets and bulky letters had a long history of poor financial performance⁴ resulting from the terminal dues system,⁵ which

² Order Approving Prices for Inbound Letter Post Small Packets and Bulky Letters, May 28, 2021 (Order No. 5904).

³ Notice of a Preliminary Determination to Unseal Self-Declared Rates for Inbound Letter Post Small Packets and Bulky Letters, June 11, 2021 (Order No. 5917).

⁴ See Docket No. ACR2019, United States Postal Service FY 2019 Annual Compliance Report, December 27, 2019, at 7-8. Fiscal Year 2019 was the last fiscal year before self-declared rates took effect in July 2020.

⁵ The prices designated operators pay each other for the delivery of UPU letter post mailpieces are called terminal dues. The terminal dues system establishes the specific rates designated operators pay each other for the delivery of UPU letter post mailpieces. In 2019, the UPU agreed that designated operators could set their own self-declared rates for small packets under agreed-upon business rules.

caused domestic mailers to subsidize these international mailpieces and distorted the international flow of small packets and bulky letters. Order No. 5917 at 13-14. The Commission found that there is public interest in the self-declared rates being transparent to ensure that the self-declared rates address the weaknesses of the terminal dues system. *Id.* at 14. In addition, the Commission stated that there is an interest in financial transparency “because these rates are only accessible to designated operators and there is potential for price discrimination.” *Id.*

In accordance with 39 C.F.R. § 3011.103(c), the Commission allowed interested persons to file responses to its preliminary determination to unseal the self-declared rates. *Id.* at 15. The Postal Service was the only party to file a response to Order No. 5917.⁶

III. DATA AT ISSUE

In the instant Order, the Commission considers the appropriate degree of non-public protection, if any, to be accorded to the specific per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product that take effect on January 1, 2022. Specifically, the Commission considers whether it is appropriate to unseal the rate chart the Postal Service provided with its Notice. See Notice, Attachment 2.

UPU letter post mailpieces consist of letters, postcards, printed papers, and small packets weighing up to 2 kilograms. Universal Postal Union, Decisions of the 2016 Istanbul Congress, 2017, Article 17 (adopted by the 2016 UPU Congress), available at http://www.upu.int/uploads/tx_sbdownloader/actsActsOfThe26ThCongressIstanbul2016En.pdf. The UPU divides letter post mail into three shapes: (1) letters and cards (format P); (2) large letters or “flats” (format G); and (3) bulky letters and small packets (format E). Designated operators are “any governmental or non-governmental entity officially designated by the member country to operate postal services and to fulfill the related obligations arising out of the Acts of the [Universal Postal Union] on its territory.” Universal Postal Union, Convention Manual, 2018, Article 1.12, available at http://www.upu.int/uploads/tx_sbdownloader/actInThreeVolumesManualOfConventionEn.pdf.

⁶ Response of the United States Postal Service to Notice of Preliminary Determination, June 21, 2021 (Postal Service Response).

In Attachment 2 of its Notice, the Postal Service provides the following rate chart for the Inbound Letter Post Small Packets and Bulky Letters product:

**Inbound Letter Post Small Packets and Bulky Letters
Rates Not of General Applicability for Mail Classification Schedule § 2340.6,
Effective January 1, 2022**

| | Per Piece in USD | Per Kilogram in USD |
|--|-------------------------|----------------------------|
| Inbound Letter Post Small Packets and Bulky Letters, unless exception applies | \$X.XX | \$X.XX |

The instant Order is limited to the self-declared rates provided in the rate chart referenced above.

Pursuant to Second Additional Protocol to the Universal Postal Convention,⁷ the Postal Service must provide its self-declared rates for Inbound Letter Post Small Packets and Bulky Letters that would take effect on January 1, 2022, to the UPU IB no later than June 1, 2021. Notice at 2. The Universal Postal Convention requires the UPU IB to publish these self-declared rates no later than July 1, 2021. *Id.* The UPU IB published designated operators' self-declared rates non-publicly on its website, including those of the Postal Service that the Commission approved in Order No. 5904, on June 28, 2021.⁸

⁷ Second Additional Protocol to the Universal Postal Convention, Article 28bis.1, Berne 2019, available at <https://www.upu.int/UPU/media/upu/files/UPU/aboutUpu/acts/actsOfCurrentCycle/actsActsOfTheExtraordinaryCongressGenevaEn.pdf>.

⁸ Universal Postal Union IB Circular 103, Provisional 2022 quality-linked terminal dues rates, June 28, 2021.

IV. SUMMARY OF ARGUMENTS

A. Postal Service Application for Non-Public Treatment

The Postal Service asserts that the self-declared rates and supporting workpapers filed under seal with its Notice contain commercial information “that, under good business practice, would not be disclosed to the public.” Notice, Attachment 1 at 1. Furthermore, the Postal Service maintains that it “does not believe that any commercial enterprise would voluntarily publish...non-public settlement rates or information pertaining to country-specific volumes, costs, and revenues.” *Id.* The Postal Service argues that, pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4), the materials it filed under seal with its Notice are exempt from mandatory disclosure. *Id.* at 1-2.

The Postal Service claims that if the materials filed with the Notice are disclosed publicly, it is likely that it will suffer commercial harm. *Id.* at 4. Specifically, the Postal Service identifies six potential commercial harms and provides one hypothetical illustrative example for each alleged commercial harm. *Id.* at 7-10. The Postal Service claims that three of these six alleged commercial harms will result only if the financial workpapers are disclosed. See *id.* Accordingly, unsealing the self-declared rates alone does not implicate these three alleged commercial harms.

The remaining three alleged commercial harms discuss potential commercial injury to the Postal Service if the self-declared rates are publicly disclosed. *Id.* First, the Postal Service alleges that designated operators would use public disclosure of the self-declared rates to their advantage and to the detriment of the Postal Service. *Id.* at 7. For example, the Postal Service claims that if the self-declared rates are disclosed, then other designated operators could adjust their reciprocal self-declared rates. *Id.* Additionally, the Postal Service asserts that public disclosure of self-declared rates could harm the negotiating position of the Postal Service when it attempts to negotiate alternative rates for Inbound Letter Post Small Packets and Bulky Letters with these designated operators. *Id.* at 8. Relatedly, the Postal Service claims that if designated

operators know the self-declared rates, then they could determine if remail opportunities exist in particular markets,⁹ which could result in revenue loss for the Postal Service. *Id.*

Second, the Postal Service alleges that competitors could analyze the self-declared rates and the supporting financial workpapers to determine what the Postal Service must charge its customers to comply with the requirements applicable to Competitive products. *Id.* The Postal Service posits that competitors could then set their own rates for similar products under that threshold to “freeze” the Postal Service out of the market. *Id.*

Third, the Postal Service asserts that competitors could analyze the “rates, revenues, volumes, and weights,” provided under seal to determine what products and rates to offer in the competitive domestic and international markets. *Id.* at 9.

Furthermore, the Postal Service claims that customers could use the same information to negotiate better terms in contracts with the Postal Service or its competitors. *Id.*

B. Postal Service Response to Order No. 5917

The Postal Service notes the Commission’s preliminary determination to unseal the self-declared rates only after the UPU publishes those rates appropriately recognizes the commercial harm that earlier compelled disclosure would cause the Postal Service. Postal Service Response at 2. The Postal Service, however, does not concur that the risk of commercial harm ends upon issuance of the UPU Circular, emphasizing that because the Circular is available only to UPU-designated Postal Operators, public disclosure would still provide a competitive advantage to private competitors, particularly to the extent that the Postal Service does not have comparable public access to its competitors’ rates. *Id.*

⁹ For example, an opportunity for remail exists when two designated operators are charged different rates for the delivery of mail by a third designated operator in its country. The first designated operator could send its UPU letter post small packets and bulky letters through the second designated operator that is charged a lower rate for delivery in the third country.

The Postal Service further argues that circumstances have changed since the Commission's past determinations to unseal self-declared rates for 2020 and 2021. *Id.* It states:

Although the effects of the COVID-19 pandemic on postal products have been mixed, there can be no doubt that the significant increase in terminal dues rates after the self-declared rates took effect had a suppressive effect on the Postal Service's E-format volumes during the past 12 months. Also, the Commission's prior determinations to disclose E-format rates publicly no doubt contributed to these declines and made them more precipitous, as the Postal Service had feared.

Id. at 2-3. It argues that these changed circumstances warrant the Commission ceasing to order compelled public disclosure of self-declared rates. *See id.*

V. COMMISSION ANALYSIS

The question before the Commission is whether the Postal Service has fulfilled its burden of persuasion that the self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product should be withheld from public disclosure. *See* 39 C.F.R. § 3011.201(a). For the reasons discussed below, the Commission concludes that the Postal Service has not met its burden and that the public interest in maintaining the financial transparency of the Postal Service, a government establishment operating in commercial markets, outweighs the nature and extent of any likely commercial harm that may result from disclosing the self-declared rates.

A. Balancing Test Under 39 U.S.C. § 504(g)(3)(A)

In this section, the Commission outlines its authority under 39 U.S.C. § 504(g)(3) to publicly disclose information the Postal Service filed under seal. The Commission also discusses the balancing test it applies when determining whether information filed under seal with the Commission should be disclosed. It then applies the balancing test to the self-declared rates. First, the Commission analyzes the nature and extent of the commercial injuries the Postal Service alleged would likely result if the self-declared

rates are disclosed. Second, the Commission discusses how unsealing the self-declared rates would further the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

1. Legal Standard

The Postal Accountability and Enhancement Act of 2006 (PAEA)¹⁰ sets forth both a mechanism for the Postal Service to seek non-public treatment of information that it provides to the Commission and the legal standard for the Commission to evaluate the degree of appropriate confidentiality to be accorded to such information. As a threshold matter, for the Postal Service to seek non-public treatment, the information must be of the type and nature eligible for non-public treatment.

The Postal Service has asserted two statutory provisions it claims support withholding the self-declared rates for Inbound Letter Post Small Packets and Bulky Letters and the supporting workpapers it filed with its Notice. Notice, Attachment 1 at 1-2. First, 39 U.S.C. § 410(c)(2) provides that the Postal Service shall not be required to disclose “information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed.”¹¹ Second, the Freedom of Information Act (FOIA) exempts from public disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential[.]” 5 U.S.C. § 552(b)(4).

After the Postal Service has identified its basis for seeking non-public treatment of the materials that it provides to the Commission, the PAEA also establishes the Commission’s specific authority as it relates to the information that the Postal Service claims to be non-public. Information filed in this proceeding and claimed by the Postal Service to be non-public shall be treated subject to the procedures of 39 U.S.C.

¹⁰ Pub. L. 109-435, 120 Stat. 3198 (2006).

¹¹ 39 U.S.C. § 410(c)(2). The Postal Service also cites 5 U.S.C. § 552(b)(3), which exempts from public disclosure information that is specifically exempted by another statutory provision, such as 39 U.S.C. § 410(c)(2). Notice, Attachment 1 at 1-2.

§ 504(g)(2) and (3). The Commission is not prohibited from publicly disclosing such information as long as two conditions are met. 39 U.S.C. § 504(g)(3)(A). First, the Commission must have engaged in a rulemaking to “establish a procedure for according appropriate confidentiality to information identified by the Postal Service [as non-public].”¹² Second, in determining the appropriate degree of confidentiality to be given to information alleged by the Postal Service to be non-public, the Commission must “balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.” 39 U.S.C. § 504(g)(3)(A).

Whenever non-public materials are provided to the Commission, an application for non-public treatment must also be provided. 39 C.F.R. § 3011.200(a). In addition to demonstrating that the materials designated as non-public contain information of a type and nature eligible for non-public treatment, the application must contain all of the information and arguments to fulfill the burden of persuasion that the materials should be withheld from the public. 39 C.F.R. § 3011.201(a). That application must include a “specific and detailed statement” containing, among other things, “[p]articular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.” 39 C.F.R. § 3011.201(b)(4). The Commission preliminarily treats those designated materials, and the information contained therein, as non-public.¹³ The Commission’s long-standing practice is that it does not *accept* any rationale for non-public treatment given in the application for non-public treatment unless the Commission makes a determination of non-public status, which may occur in response to a motion by an interested person or *sua sponte*. See Order No. 4679 at 11.

¹² 39 U.S.C. § 504(g)(3)(A). In 2009, the Commission satisfied this condition when it established procedures for treatment of materials filed by the Postal Service and claimed to be non-public. Docket No. RM2008-1, Final Rule Establishing Appropriate Confidentiality Procedures, June 19, 2009 (Order No. 225) (now codified at 39 C.F.R. pt. 3011). In 2018, these procedures underwent revision through notice-and-comment rulemaking. See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018 (Order No. 4679) (now codified at 39 C.F.R. pt. 3011).

¹³ 39 C.F.R. § 3011.102(a). This is consistent with the Commission’s long-standing practice under former § 3007.23. See Order No. 4679 at 11.

Section 3011.104(a) incorporates the standard for issuing a determination to publicly disclose materials claimed by the Postal Service to contain non-public information from 39 U.S.C. § 504(g)(3)(A): “the Commission shall balance the nature and extent of the likely commercial injury identified by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.” 39 C.F.R. § 3011.104(a). In applying this standard, the Commission undertakes a highly fact-specific analysis of the public interest in maintaining the financial transparency of a government entity competing in commercial markets, with a particular focus on the self-declared rates, and weighs it against the nature and extent of any likely commercial injury to the Postal Service from disclosure of the rates. This requires the Commission to evaluate the likelihood of the potential commercial harm identified by the Postal Service in its application for non-public treatment.

In the sections that follow, the Commission first discusses the nature and extent of any likely commercial harm, followed by a discussion of the public interest in maintaining financial transparency.

2. Nature and Extent of Alleged Commercial Injury

In this section, the Commission discusses the first part of the balancing test, the nature and extent of any likely commercial injury to the Postal Service from disclosure. The Commission focuses on and assesses the likelihood of the specific alleged commercial harms identified by the Postal Service.

In the application for non-public treatment, the Postal Service alleged three commercial harms would result if the self-declared rates are publicly disclosed. See Notice, Attachment 1 at 7-10. First, the Postal Service alleges that designated operators would use public disclosure of the self-declared rates to their advantage and to the detriment of the Postal Service. *Id.* at 7. Second, the Postal Service alleges that competitors could analyze the self-declared rates and the supporting financial workpapers to determine what the Postal Service must charge its customers to comply

with the requirements applicable to Competitive products. *Id.* at 8. Third, the Postal Service asserts that competitors could analyze the “rates, revenues, volumes, and weights,” provided under seal to determine what products and rates to offer in the competitive domestic and international markets. *Id.* at 9. Furthermore, the Postal Service claims that customers could use the same information to negotiate better terms with the Postal Service or its competitors. *Id.*

In Order No. 5917, the Commission preliminarily determined that it was unlikely that unsealing the self-declared rates after the UPU IB publishes the rates would result in the three alleged commercial harms.¹⁴ Specifically, the Commission stated that the potential for designated operators to adjust their reciprocal self-declared rates or gain an advantage during bilateral negotiations would conclude when the UPU IB publishes these rates as the designated operators would learn the specific self-declared rates from the UPU. Order No. 5503 at 12. The Commission also found that disclosing the self-declared rates would not help designated operators to determine if remail opportunities exist because designated operators already know that remail opportunities exist wherever designated operators are charged default terminal dues rather than self-declared rates. *Id.* Unsealing the self-declared rates alone would not help designated operators identify which designated operators pay self-declared rates versus those that pay default terminal dues. *Id.* The Postal Service does not contest the Commission’s conclusions or further address this alleged harm in its response. *See generally* Postal Service Response.

With regard to the second and third alleged harms, in Order No. 5517, the Commission noted it appeared that the second and third alleged commercial harms “would only result if financial workpapers are disclosed in addition to the self-declared rates.” Order No. 5917 at 11-12 (footnote omitted). If the Postal Service believed that the second or third alleged commercial harm is likely to result if just the self-declared rates are disclosed, the Commission instructed the Postal Service to “provide an

¹⁴ Docket No. CP2020-120, Notice of a Preliminary Determination to Unseal Self-Declared Rates for Inbound Letter Post Small Packets and Bulky Letters, May 8, 2020, at 13 (Order No. 5503).

illustrative example of how the harm would occur if just the self-declared rates are unsealed.” *Id.* at 12 n.18.

The Postal Service did not provide any illustrative examples of how these harms would occur if just self-declared rates are unsealed. See Postal Service Response. It is unclear from the application for non-public treatment how unsealing the self-declared rates alone would result in these commercial harms, and without illustrative examples, the Commission is left to guess how the alleged commercial harms would result from disclosing the self-declared rates alone.

After identifying the higher self-declared rates as suppressing the Postal Service’s E-format volume during the past 12 months, the Postal Service claims that “there can be no doubt” that prior compelled public disclosure of E-format rates “contributed to these declines and made them more precipitous, as the Postal Service had feared.” Postal Service Response at 2-3. The Postal Service offers no evidence supporting its counterfactual claim that E-format volume in the past 12 months would have been higher but for the compelled disclosure of the 2020 and 2021 rates. The expected drop in volume coinciding with the introduction of higher self-declared rates is not evidence itself. Even if volumes had instead increased or remained static, the Postal Service could just as easily made the conclusory claim that volumes would “no doubt” have been even higher were it not for the compelled public disclosure.

The Postal Service must meet its burden of persuasion to demonstrate that disclosure is likely to result in commercial injury. In this proceeding, the Postal Service provides inadequate support for its allegations of commercial injury. After thoroughly considering the nature of the self-declared rates at issue and the commercial harms alleged by the Postal Service, the Commission finds that it is unlikely that unsealing the self-declared rates after the UPU IB publishes the rates would result in the commercial harms alleged by the Postal Service.

3. Public Interest

In this section, the Commission discusses the second part of the balancing test, the public interest in maintaining the financial transparency of the Postal Service, a government entity competing in commercial markets. Enacted in 2006, the PAEA significantly changed the regulation of the Postal Service, which included increased transparency and accountability by enhancing the authority and responsibilities of the Commission.¹⁵ Although there was no committee or conference report issued for the version of the bill that was enacted into law, the legislative history underlying the PAEA confirms that enhanced transparency was a key motivation in the enactment of postal reform. For example, both the committee report accompanying S. 2468, the Senate's 2004 postal reform bill, and the committee report accompanying H.R. 22, the House of Representatives' 2005 postal reform bill, noted that enhanced transparency and accountability were essential aspects of postal reform.¹⁶ Both reports emphasized that transparency is necessary to ensure fair treatment of Postal Service customers and its competitors. S. Rep. No. 108-318 at 5; H.R. Rep. No. 109-66 at 46. Consistent with Congress's intent to enhance accountability through increased transparency, the PAEA grants the Commission authority to disclose materials identified as non-public by the Postal Service.¹⁷

¹⁵ See, e.g., 39 U.S.C. §§ 3622, 3652, 3653, 3662. For an extended discussion of the differences between the PAEA and its predecessor legislation, see Docket No. RM2017-3, Order on the Findings and Determination of the 39 U.S.C. § 3622 Review, December 1, 2017, at 23-45 (Order No. 4257).

¹⁶ S. Rep. No. 108-318, at 5 (2004), H.R. Rep. No. 109-66, pt. 1, at 43 (2005).

¹⁷ 39 U.S.C. § 504(g)(3). Although transparency related to 39 U.S.C. § 504(g)(3) is central to the issue in this Order, many of the PAEA's provisions sought to enhance transparency. For example, the Postal Service must file extensive financial reporting information with the Commission and the information must comply with several reporting requirements required by "registrants" before the U.S. Securities and Exchange Commission. 39 U.S.C. § 3654(a)-(b). Additionally, the PAEA enhanced transparency by including "increase the transparency of the ratemaking process" as one of the nine objectives of the Market Dominant ratemaking system. 39 U.S.C. § 3622(b)(6). In Docket No. RM2017-3, the Commission found that the system "increased transparency...if comprehensive and understandable material relating to each rate proceeding was available to stakeholders." Order No. 4257 at 81.

The D.C. Circuit has determined that the Commission's goal of increased transparency of Postal Service filings related to the UPU is supported by both the PAEA and congressional history. See *United States Postal Serv. v. Postal Regul. Comm'n*, 963 F.3d 137, 140 (D.C. Cir. 2020) ("The Act 'guarantees a higher degree of transparency' than prior legislation to 'ensure fair treatment' of customers and competitors. [*United States Postal Serv. v. Postal Regul. Comm'n*, 886 F.3d 1261, 1263 (quoting S. Rep. No. 108-318, at 1); see also H.R. Rep. No. 109-66, pt. 1, at 46] ('[T]he Postal Service must be subject to a high degree of transparency, including in its finances and operations.').").

In Order No. 5917, the Commission discussed how disclosing the self-declared rates furthers the public interest in maintaining the financial transparency for a government establishment competing in commercial markets. Prior to its January 1, 2020 transfer to the Competitive product list, Inbound Letter Post Small Packets and Bulky Letters was part of the Market Dominant Inbound Letter Post product. The Inbound Letter Post product has a long history of poor financial performance. Order No. 5917 at 13-14. This poor financial performance has been a cause of concern for more than 20 years. The Commission has repeatedly stated that, as a result of the UPU terminal dues system, domestic mailers have been subsidizing the entry of Inbound Letter Post items by designated operators.¹⁸ In recent years, participants have expressed similar concerns related to the financial performance of the Inbound Letter Post product and the terminal dues system. For example, several U.S. Representatives and a U.S. Senator expressed concerns that because terminal dues are less than domestic rates, U.S. mailers pay more than foreign mailers to mail items within the United States and U.S. companies are on an uneven playing field when competing with

¹⁸ *Id.* at 14; see Docket No. ACR2018, *Annual Compliance Determination*, April 12, 2019, at 85.

foreign companies.¹⁹ These concerns were shared by numerous U.S. businesses that compete against foreign businesses.²⁰ In a presidential memorandum, former President Donald J. Trump noted that the Postal Service is not fully reimbursed for the cost of delivering inbound small packets and bulky letters and that the terminal dues system distorts the international flow of small packets by incentivizing the shipping of goods from countries that pay lower terminal dues.²¹

In Order No. 5917, after considering the long history of concern discussed above, the Commission found that unsealing the self-declared rates would further the public interest in maintaining financial transparency because it would help ensure that the recent reform efforts address the weaknesses of the terminal dues system. Order No. 5917 at 14. The Commission also noted that unsealing the self-declared rates would further the public interest in maintaining financial transparency because these rates are only available to designated operators and there is potential for price discrimination. *Id.* In its response, the Postal Service does not contest or otherwise address these points regarding the public interest in unsealing the self-declared rates. See Postal Service Response. The D.C. Circuit has agreed with the Commission's interpretation of the phrase "public interest" with respect to the UPU terminal dues situation. In rejecting the Postal Service's restrictive reading of the phrase, the Court concluded:

¹⁹ Docket No. IM2018-1, Comment Received from U.S. Representative Daniel W. Lipiniski, July 5, 2018, at 1; Docket No. IM2018-1, Comments Received from U.S. Representatives Kenny Marchant and Ralph Abraham, July 3, 2018, at 2-3; Docket No. IM2018-1, Comment Received from U.S. Senator Bill Cassidy, M.D., July 3, 2018, at 1.

²⁰ Docket No. IM2018-1, Comments of Small Business & Entrepreneurship Council, July 2, 2018, at 1; Docket No. IM2018-1, Public Comment from Honey-Can-Do International, LLC, June 21, 2018, at 2; Docket No. IM2018-1, Comment Received from Range Kleen, June 19, 2018, at 2; Docket No. IM2018-1, Comment Received from Pretika Corporation, June 15, 2018, at 2; Docket No. IM2018-1, Comment Received from Dexas International Ltd., June 12, 2018, at 2.

²¹ Presidential Memorandum for the Secretary of State, Secretary of the Treasury, Secretary of Homeland Security, Postmaster General, and Chairman of the Postal Regulatory Commission, August 23, 2018 (Presidential Memorandum), at section 2(c)(i), available at <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-secretary-state-secretary-treasury-secretary-homeland-security-postmaster-general-chairman-postal-regulatory-commission/>.

No such limitation appears in the text of the statute, and as the Commission explained, financial losses to a government establishment such as the Postal Service burden the public. Surely, the public has an interest in understanding why a government establishment is hemorrhaging hundreds of millions of dollars per year. After all, artificially low prices can distort domestic competition and result in Americans paying more than they should for other mail products.

United States Postal Serv., 963 F.3d at 140.

Unsealing the self-declared rates will enable interested parties to assess whether limiting self-declared rates to designated operators amounts to “undue or unreasonable discrimination[.]” See 39 U.S.C. § 403(c). In addition, it will enable interested parties to assess whether designated operators are receiving “undue or unreasonable preferences[.]” See 39 U.S.C. § 403(c). Accordingly, unsealing the self-declared rates will better allow interested parties to determine whether filing a section 3662 complaint is appropriate. If users of the mail decide to file a section 3662 complaint, unsealing the self-declared rates would enable them to file a complaint in which they can fully outline their allegations of undue or unreasonable discrimination or preferences because they would be able to discuss the self-declared rates unburdened by protective conditions.

B. Conclusion

For the above reasons, the Commission determines that it is not appropriate to accord non-public treatment to the specific per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product. The Commission finds that the Postal Service did not meet its burden of persuasion to demonstrate that the self-declared rates should be withheld from the public. The public interest in maintaining the financial transparency of the Postal Service, a government establishment operating in commercial markets, outweighs the nature and extent of any likely commercial harm that may result from public disclosure of the self-declared rates.

Specifically, the Commission finds that there is substantial public interest in maintaining the financial transparency of the Postal Service. Considering the extent

and nature of the discussion surrounding the Inbound Letter Post product and the recent UPU reforms, the Commission finds that unsealing the self-declared rates will substantially further the public interest. Additionally, after considering the commercial harms identified in the application for non-public treatment, the Commission finds that it is unlikely that disclosing the self-declared rates will result in the commercial harms identified by the Postal Service. The public has a legitimate interest in the information in question. The Postal Service's unsupported allegations of commercial harm are not enough to justify retaining this information under seal.

This determination is consistent with the Commission's prior determinations to unseal self-declared rates that took effect in July 2020 and January 2021.²² As discussed above, the Postal Service provided no evidence that the expected decline in E-format volumes that accompanied the introduction of higher, self-declared rates was exacerbated by prior public disclosure of these rates. *See supra* at 11-12. Accordingly, the Commission does not find persuasive the Postal Service's claim that the expected decrease in E-format volumes demonstrates changed circumstances warranting a different result.

In Order No. 5451, the Commission ordered the Postal Service to publicly file its 2021 self-declared rates 7 days after the UPU published those rates. Order No. 5451 at 35. The UPU has already published the self-declared rates for 2022.²³ Therefore, the Postal Service shall publicly file the specific per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product 7 days after the issuance of this Order.

²² See Docket Nos. MC2019-17 and CP2019-155, Final Determination to Unseal Self-Declared Rates for Inbound Letter Post Small Packets and Bulky Letters, March 9, 2020 (Order No. 5451); Docket No. CP2020-120, Final Determination to Unseal Self-Declared Rates for Inbound Letter Post Small Packets and Bulky Letters, June 3, 2020 (Order No. 5527).

²³ Universal Postal Union IB Circular 103, Provisional 2022 quality-linked terminal dues rates, June 28, 2021.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Commission determines that the specific per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product should be unsealed.
2. The Postal Service shall publicly file the specific per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product 7 days after the issuance of this Order.

By the Commission.

Erica A. Barker
Secretary